Supreme Court, U. S.
FILED
JUL 3 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 75-13

ROBERT I. FERGUSON,

Petitioner

vs.

STATE OF ALABAMA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

JOHN L. LAWLER
Attorney for Petitioner
903 Commercial Guaranty
Bank Bldg.
Post Office Box 1643
Mobile, Alabama 36601

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IN THE
SUPREME COURT OF THE
UNITED STATES

_____

NO.

_____

PETITION FOR A WRIT OF CERTIORARI
TO THE ALABAMA COURT
OF CRIMINAL APPEALS

Petitioner respectfully prays that a writ of certiorari issue to review the affirmance by the Alabama Court of Criminal Appeals of the judgment of the Circuit Court of Washington County, Alabama, entered in the above entitled case on October 30, 1973.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama dated May 8, 1975, and the opinion of the Alabama Court of Criminal Appeals dated March 4, 1975, have not yet been reported. Petitioner is advised the opinions were released to West

Publishing Company on June 4, 1975. Copies of the opinions were appended hereto.

JURISDICTION

The judgment of the Alabama Court of Criminal Appeals was entered on March 4, 1975. A petition for rehearing was denied on the 1st day of April, 1975. The Supreme Court of Alabama entered a final order denying a petition for certiorari to the Alabama Court of Criminal Appeals on the 8th day of May, 1975.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3) and Rule 19, United States Supreme Court Rules.

QUESTIONS PRESENTED

1. Does a rule of law which provides for the striking of a tardily filed transcript in an appellate court on

motion of the State, if the appellant is not an indigent, deny equal protection of the law to non-indigent appellants, when the rule of law provides that a tardily filed transcript by an indigent will not be stricken on motion of the State?

2. Does the granting of an indigent defendant special rights on appeal require that the same rights be extended to non-indigent appellants under the Equal Protection clause of the United States Constitution?

3. When the court reporter at appellant's trial became aware that the appellant was unable to pay for the transcript of the evidence in his case within the time allowed for the filing of the transcript with the appellate court, after notice of appeal, did it become the

duty of the trial court to appoint counsel for the appellant on appeal and provide a free transcript of the proceedings?

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V
(Rights of Accused in Criminal Proceedings)

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law;

nor shall private property be taken for public use, without just compensation.

AMENDMENT VI
(Right to Speedy Trial, Witnesses, etc.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT XIV
Section 1.
(Citizenship Rights Not to Be Abridged by States)

All persons born or naturalized in

the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner was convicted of grand larceny on October 30, 1973, and on conviction gave notice of appeal. Although Petitioner's employed attorney at the trial gave notice of appeal and filed a motion for new trial and motion for probation, the affidavit of the Petitioner filed with the Alabama Court of Criminal

Appeals (App. Pg. 27) shows that Petitioner's employed attorney at the trial did not undertake the representation of Petitioner on appeal, and that he advised Petitioner to seek other counsel for the appeal.

The affidavit of Petitioner further shows that an attempt was made to employ counsel and to get the transcript of the evidence in the case prepared by the court reporter, and that Petitioner was delayed in retaining an attorney for appeal and getting the transcript of the evidence in that he did not have the necessary money to pay the fees which were required in advance. By the time Petitioner had employed an attorney on appeal, the time for filing the transcript of the evidence with the Clerk of the Circuit Court of Washington County,

Alabama, by the court reporter had already expired. This fact was not readily known by the attorneys handling Petitioner's appeal in that the court reporter who transcribed Petitioner's case and the Clerk's Office of Washington County had advised Petitioner's attorney erroneously that the motion for new trial had been denied on May 13, 1974. This is set out in the affidavit filed by Petitioner's attorney on the 27th day of February, 1975, which is supported by exhibits. (App. Pg. 30)

During the critical time period between the Petitioner's conviction and the date he employed attorneys to handle his appeal, he was without counsel and uninformed of the necessity of getting the transcript of the evidence filed with the Clerk of the Circuit Court of

Washington County, Alabama, within the time allowed by law.

Petitioner's attorneys, on discovery of this deficiency, filed with the Alabama Court of Criminal Appeals a motion that Petitioner be treated as an indigent during the period between his conviction and the time that he retained an attorney on appeal. (App. Pg.36)

This petition presents to the Court an opportunity for the Court to outline the duties of a trial court with regard to the ascertainment of a defendant's need for appointed counsel on appeal when the record shows that employed counsel was available at the trial. If a defendant is indigent at the time of trial and on conviction gives notice of appeal, the trial court encounters little difficulty in understanding its role in

the determination of the need for appointed counsel on appeal and with providing counsel for an indigent defendant. The constitutional requirement of counsel on appeal is easily satisfied in this situation. The Petitioner's case presents a problem not as easily answered. The Court of Criminal Appeals in its opinions in Brummitt v. State, 44 Ala. App. 78, 203 So. 2d 133, and Leonard v. State, 43 Ala.App. 454, 192 So. 2d 461, held that the transcript of the evidence may be tardily filed with the trial court if the appellant is an indigent. If the appellant has not been declared indigent and the transcript of the evidence is tardily filed, the transcript of the evidence will be stricken. This rule raises the constitutional question of whether or not the appellant received

equal treatment of law as guaranteed by the United States and Alabama Constitutions.

REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT

There is no question that the Petitioner made known to the trial court his desire to appeal at the conclusion of the case. He did not, however, specifically request the appointment of counsel on appeal during the critical time within which the transcript of the evidence in his case was required to be filed with the trial court. As pointed out in Swenson v. Bosler, 386 U.S. 258, 18 L.Ed. 2d 33, 87 S.Ct. 996, it cannot be inferred from a defendant's failure to specifically request appointment of appellate counsel, that he has knowingly and intelligently waived his right to

the appointment of appellate counsel. The Petitioner's indigency was known to a responsible State officer. As shown by the affidavit of Petitioner filed in the Alabama Court of Criminal Appeals (App. Pg. 36), he talked with Mildred Womble, the court reporter who reported the proceedings at Petitioner's trial, about the preparation of the required transcript of the evidence. He was advised by Mrs. Womble that the transcript would have to be paid for in advance. She was aware that he was unable to make the payment during the critical time when the transcript of the evidence was due to be filed, however, she did not advise Petitioner nor did any other State officer advise Petitioner, of his right as an indigent to a free transcript and appointed counsel.

In Pate v. Holman, 341 F.2d 764, the Court outlined the responsibility of a trial court in appointing an attorney for a defendant on appeal when the defendant has had an employed counsel at the trial. Once a defendant has made known his desire to appeal and any responsible State official has become aware of his indigency, it becomes the duty of the Court to appoint counsel for such a defendant on appeal. Petitioner was at the time of his conviction, a resident of Waynesboro, Mississippi. His employed counsel at the trial has his office in Grove Hill, Alabama, and Circuit Judge William G. Lindsey, the trial judge at Petitioner's trial, serves a three county circuit which includes Choctaw, Clarke and Washington counties. Under these circumstances, conversations with

Mildred Womble about the inability of Petitioner to pay for the transcript in advance as required by Mrs. Womble, amounted to a communication with a responsible State officer of the Petitioner's indigency. Instead of being advised that he would have to save up the money to pay for the transcript of the evidence in his case, Petitioner should have been advised that he had a right to a free transcript and an appointed attorney if he could not afford one.

The Court of Criminal Appeals in its decision of March 4, 1975, considers the Petitioner to be a non-indigent, and because of this, denies him the benefit of the rulings made in Brummitt v. State, 44 Ala.App. 78, 203 So.2d 133, and Leonard v. State, 43 Ala.App. 454, 192 So.2d 461. As pointed out in

the dissenting opinion by Justice De Carlo and as pointed out in the dissenting opinion in Hadley v. State, 288 Ala. 293, 259 So.2d 853, the granting to an indigent defendant of special rights on appeal requires that the same rights be extended to non-indigent appellants under the Equal Protection Clause of the United States Constitution.

CONCLUSION

If the Petitioner is to be considered as a non-indigent, then he has been denied equal protection of the law in that two classes of appellants with unequal rights have been created by the decisions of the Court of Criminal Appeals of Alabama in this cause and in Brummitt v. State, supra, and Leonard v. State, supra. If Petitioner is to be considered as an indigent during that

critical time during which he was saving funds to pay the cost of attorney's fees and the fees for the preparation of the transcript of the evidence, then the tardy filing of the transcript of the evidence should be excused or the trial court has violated Petitioner's constitutional rights in not appointing for him an attorney on appeal and allowing him a free transcript.

This Court should grant certiorari because the Alabama Court of Criminal Appeals departed from accepted judicial proceedings, or sanctioned such a departure by the trial court. Due process of law requires the writ to issue.

Respectfully submitted,

HOWELL, JOHNSTON, LANGFORD,
FINKBOHNER & LAWLER

BY:_____
JOHN L. LAWLER
Attorney for Petitioner
Post Office Box 1643
Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 3rd day of July, 1975, served a copy of the foregoing Petition upon the Honorable William J. Baxley, Attorney General of the State of Alabama, by mailing a copy of same to his offices in Montgomery, Alabama, by United States mail, properly addressed and First Class postage prepaid.

_____
JOHN L. LAWLER
Attorney for Petitioner

APPENDIX

OPINION OF ALABAMA COURT OF CRIMINAL APPEALS

Mar 4 1975

THE STATE OF ALABAMA -- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1974-75

1 Div. 508

Robert I. Ferguson
v
State

Appeal from Washington Circuit Court

TYSON, JUDGE

The appellant was indicted for the grand larceny of fifty butcher sows and one white boar, of the value of $3600.00 personal property of A. V. Campbell, Jr.

The appellant was represented at trial, on October 29 - 30, 1973, by retained counsel, and on October 30, 1973, was found guilty as charged by the jury. The trial court then entered judgment, setting sentence at three years imprisonment. On this same date, the appellant gave notice of appeal in open court.

On November 30, 1973, the appellant, through his retained counsel, filed a

motion for new trial, and this was continued by the trial court until February 5, 1974, at which time the cause was heard in open court, with the appellant and his attorney being present, and was denied.

On March 27, 1974, the appellant filed a motion requesting probation, which motion was continued until May 13, 1974, and following a full hearing in open court, was denied on this date.

The court reporter s transcript of the testimony in this cause was filed in the office of the circuit clerk on June 26, 1974. There were no extensions of time requested or shown in the record in this cause. Moreover, there is no showing of indigency anywhere in the transcript in this cause.

On May 13, 1974, a certificate of appeal was filed by the clerk of the Circuit Court of Washington County, which noted that the appellant's motion for new trial was denied on February 5,1974, and also that the appellant had given notice of appeal also on this same date.

On September 3, 1974, the Circuit Judge entered an order granting the circuit clerk thirty additional days in which to file the transcript of the record in the Court of Criminal Appeals of Alabama.

On September 26, 1974, the Court of Criminal Appeals, upon motion of the

appellant, granted an extension of sixty days for the circuit clerk to file the transcript of the record in this court. The certificate of the circuit clerk of Washington County, Alabama, is dated November 22, 1974, and the complete record was filed in this court on November 25, 1974.

I

In the case at bar, the Attorney General has filed a motion to strike the court reporter's transcript of the testimony as not being timely filed by the court reporter with the circuit clerk. There were no extensions of time requested by the appellant or his attorney, nor are there any extensions shown in this record to allow the court reporter additional time to file this record. See Rule 37,Supreme Court of Alabama, Revised Rules of Practice, Title 7, Appendix, Code of Alabama 1940; Wanninger v. Lange, 268 Ala. 402, 108 So. 2d 331; Relf v. State, 267 Ala. 3, 99 So.2d 216. See also Hadley v. State, 288 Ala. 293, 259 So. 2d 853.

As noted above, the appellant gave notice of appeal on the same date that the trial court originally pronounced judgment and sentence in this cause, October 30, 1973.

The appellant's motion for new trial was overruled on February 5, 1974, and also the appellant gave notice of appeal a second time on this date.

Thereafter, there were no extensions of time requested for the court reporter to file the transcript of the testimony with the circuit clerk.

As noted above, there is also no showing of indigency anywhere in the transcript in this cause.

We hold that the court reporter's transcript of the testimony should have been filed with the circuit clerk within sixty days from February 5, 1974, since this was the date on which the motion for new trial was overruled by the Circuit Court.

Under the opinion of the Supreme Court of Alabama in Relf v. State, supra, the sixty day period in which the transcript of the testimony in this cause could or should have been filed by the court reporter with the circuit clerk, began to run on this date.

Since the court reporter's transcript of the testimony was not filed with the circuit clerk within sixty days after the denial of the motion for new trial, the motion of the Attorney General to strike the transcript of the evidence is due to be granted. Relf v. State, 267 Ala. 3, 99 So. 2d 216; Granger v. State, 39 Ala. App. 461, 103 So. 2d 835; Albert v. State, 274 Ala. 579, 150 So. 2d 198, Holcombe v. State, 40 Ala. App. 205, 110 So. 2d 342.

Moreover, it should be here noted

that the order denying probation is not reviewable upon the appeal from the judgment of conviction. Parnell v. State, 35 Ala. App. 532, 49 So. 2d 919; Hughes v. State, 45 Ala. App. 250, 228 So. 2d 862; Hinkle v. State, 50 Ala. App. 215, 278 So. 2d 218.

The motion to strike the transcript of the evidence being granted, we have examined the record proper. It is in all respects regular. This judgment is therefore due to be affirmed and it is so ordered. Granger v. State, supra; Seibert v. State, 53 Ala. App. 229, 298 So. 2d 649, cert. denied 292 Ala. 748, 298 So. 2d 652. The transcript of the evidence is striken. Sweat v. State, 53 Ala. App. ___, 305 So. 2d 386, cert. denied 293 Ala. ___, 305 So. 2d 386.

The judgment is

AFFIRMED.

Cates, P.J., Harris and Bookout, JJ. concur;
DeCarlo, J., dissents.

DeCARLO, J., Dissenting.

This matter points up the wisdom of the dissent filed by our Chief Justice and the eminent Associate Justice James S. Coleman, Jr., in Hadley v. State, 288 Ala. 293, 259 So. 2d 853.

I wholeheartedly concur and file this dissent reiterating what they so masterfully said but minus the ability of their eloquence.

While I too, agree that indigents should be given an equal measure of justice and no less, it certainly smacks of inequality when one who is able to employ counsel is denied the right to perfect his appeal because the time specified for filing the transcript was not strictly adhered to, when under the same circumstances, one who was indigent would be allowed to implement his appeal and disregard the specifications and limitations.

Although I am aware of the attorney's responsibility to file the transcript within the required sixty days, it remains an escapable fact that regardless of where the fault lies in an indigent situation, the appeal would be considered timely in all respects.

There is something inherently wrong with a rule that, under the guise of equal justice, gives an indigent defendant far more rights than another who uses his own resources to obtain the same thing - justice.

THE ALABAMA COURT OF CRIMINAL APPEALS
Montgomery, Alabama

APR 1 1975

1 Div. 508, Washington, Circuit Court

Robert I. Ferguson, Appellant

vs

State of Alabama, Appellee

APR 1 1975

Dear Sir: This is to advise you that on APR 1 1975 the Court of Criminal Appeals announced decision of;

[ ] No opinion.

[ ] xxxxxxxxxx
xxxxxxxxxxxxxx
application for rehearing overruled
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

in the above stated cause.

APR 1 1975

Yours truly,
MOLLIE JORDAN, CLERK

OPINION OF SUPREME COURT OF ALABAMA

May 8 1975

THE STATE OF ALABAMA -- JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1974-75

Ex parte Robert I Ferguson

SC 1226 Petition for Writ of Certiorari to Court of Criminal Appeals

(In re: Robert I. Ferguson

v.

State of Alabama)

ALMON, JUSTICE

WRIT DENIED.

Merrill, Bloodworth, Maddox, Jones, Shores and Embry, JJ., concur.

Heflin, C. J., and Faulkner, J., dissent.

HEFLIN, CHIEF JUSTICE (dissenting):

I would grant the writ for the reasons set out in my dissenting opinion in Hadley v. State, 288 Ala. 293, 259 So. 2d 853.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 8 day of May, 1975.

s/ J. O. Sentell
Clerk, Supreme Court of Alabama

AFFIDAVIT OF ROBERT I. FERGUSON

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

ROBERT I. FERGUSON, Appellant,
vs.
STATE OF ALABAMA, Appellee.

FIRST DIVISION

NO. 508

STATE OF LOUISIANA)
PARISH OF ST. CHARLES)

A F F I D A V I T

Personally appeared before me, the undersigned authority in and for the State of Louisiana and Parish of St. Charles, ROBERT I. FERGUSON, who, being by me first duly sworn, did say on oath as follows:

1. That he is the Appellant in the above-styled cause and that on being convicted in the above cause in the Circuit Court of Washington County, Alabama, on October 30, 1973, he did, through his attorney, Wayman O. Gilmore, who was employed by him for the trial of the case in the Circuit Court of Washington County, Alabama, give notice of appeal.

2. That Wyman O. Gilmore, your Affiant's attorney in the trial court, advised your Affiant that he did not handle appeals and suggested that Affiant employ another attorney for the purposes

of prosecuting his appeal.

3. That your Affiant, shortly after October 30, 1973, talked with several attorneys about handling the appeal in the above cause for him but that he was unable to pay the fees quoted by the attorneys and was further unable to pay the costs of the transcript in the cause in advance, as required by the attorneys and the court reporter who reported the above case.

4. That your Affiant was, during the latter part of 1973 and in early 1974 employed, but did not make sufficient monies to pay in advance the $350.00 required by the court reporter to transcribe the evidence in the above cause and it was necessary that your Affiant save from his earnings the necessary money to employ counsel and pay for the transcript of the evidence before any action could be taken on his appeal.

5. That your Affiant is unlearned in the law and did not know that if he had been adjudged indigent after his conviction in the above on October 30, 1973, that he could have been provided with a free transcript and had an attorney appointed to represent him, and Affiant states that he was not advised of this possibility by the trial court or by any other person he contacted regarding his right to appeal.

6. That on May 31, 1974, your Affiant had saved sufficient money to pay for

the transcript of the evidence in the above and to employ attorneys for the appeal, and Affiant states that the attorneys employed by him undertook his representation on receipt of the money from Affiant for the cost of the transcript and for their fee, which Affiant paid to attorneys for Affiant on May 31, 1974, and Affiant states that said attorneys undertook to represent him in this matter on June 7, 1974.

s/ Robert I. Ferguson
ROBERT I. FERGUSON

Subscribed and sworn to before me on this 13th day of March, 1975.

s/ (Signature Illegible)
NOTARY PUBLIC, STATE OF LOUISIANA
PARISH OF ST. CHARLES

My Commission Expires at Death

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 17 day of March, 1975, served a copy of the foregoing Affidavit upon Ms. Sarah M. Greenhaw, Assistant Attorney General, State of Alabama, and upon The Honorable William J. Baxley, Attorney General, State of Alabama, by mailing the same by United States mail, properly addressed and First Class postage prepaid.

s/ John L. Lawler
JOHN L. LAWLER, Attorney
for Affiant
Post Office Box 1643
Mobile, Alabama 36601

AFFIDAVIT IN OPPOSITION TO MOTION TO STRIKE TRANSCRIPT OF RECORD AND DISMISS APPEAL

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

ROBERT I. FERGUSON, Appellant,	)	
	)	FIRST DIVISION
vs.	)	
	)	NO. 508
STATE OF ALABAMA, Appellee	)	

AFFIDAVIT IN OPPOSITION TO MOTION TO STRIKE TRANSCRIPT OF RECORD AND DISMISS APPEAL

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me, the undersigned authority in and for the State of Alabama at Large, JOHN L. LAWLER, attorney for the Appellant, who being by me first duly sworn, did say on oath as follows:

1. That the Appellant Robert I. Ferguson employed John L. Lawler to prosecute his appeal in the above cause on June 7, 1974, and that upon being employed, Appellant's attorney contracted the Clerk's Office, Washington County, Alabama, and was advised that notice of appeal had been given in the above cause on May 13, 1974, and attached hereto as Exhibit "A" and made a part hereof is

Appellant's attorney's letter to the Court Reporter requesting preparation of the transcript of the evidence dated June 7, 1974, along with a copy of Mildred Womble, the court reporter's reply to Appellant's attorney's letter.

2. That by letter dated June 25, 1974, a copy of which is attached hereto, Mildred Womble, court reporter, Washington County, advised Appellant's attorney that she had transcribed the proceedings heard in the above on motion for new trial which said proceedings were stated by her to have been held on May 13,1974.

3. Appellant's attorney, in reliance on the advice of the Clerk's Office in Washington County, that notice of appeal had been given on May 13, 1974, and further in reliance on the written communication of the court reporter that notice of appeal had been given on May 13, 1974, computed the time for the filing of the transcript of the record in the above as being sixty (60) days from June 26, 1974, the date the transcript was filed, plus the thirty (30) day extension granted by the trial court, and the extension granted by the Court of Criminal Appeals.

s/ John L. Lawler
JOHN L. LAWLER
Post Office Box 1643,
Mobile, Ala. 36601

Subscribed and sworn to before me on this 26th day of February, 1975.

s/ Carole R. Bailey
NOTARY PUBLIC,
STATE OF ALABAMA AT LARGE

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 26th day of February, 1975, served a copy of the foregoing Affidavit upon The Honorable William J. Baxley, Attorney General of the State of Alabama, by mailing a copy of same by United States mail, properly addressed and First Class postage prepaid.

s/ John L. Lawler
JOHN L. LAWLER

June 7, 1974

Mrs. Mildred Womble
Washington County Courthouse
Chatom, Alabama 36518

RE: Robert Ferguson v. State of Alabama

Dear Mrs. Womble:

I have Mr. Ferguson's check for my fee and the deposit of $400.00 for the cost of preparing the transcript of the evidence in his case. I would appreciate your preparing the transcript and advising me when it has been completed and filed with the Clerk of the Court. I understand that the notice of appeal was given on May 13, 1974, and that the transcript will be due in the Circuit Clerk's Office on the 13th day of July, 1974. If you need additional time, please let me know and I will get Judge Lindsey to sign an order extending the time for the filing of the transcript.

Thank you for your kind assistance in this matter.

Very sincerely yours,

HOWELL, JOHNSTON, LANGFORD & FINKBOHNER

s/ John L. Lawler
John L. Lawler

JLL/cb

cc: Mr. Robert Ferguson

CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF ALABAMA
CHATOM, ALABAMA
36518
William G. Lindsey Judge
Mildred N.Womble Court Reporter

June 10, 1974

Hon. John L. Lawler
Howell, Johnston, Langford & Finkbohner
P. O. Box 1643
Mobile, Alabama 36601

Dear John:

Re: Robert Ferguson v. State of Alabama

Thank you for your letter advising me that you have the money in hand for the transcript in the Ferguson case. I am transcribing a deposition which I should finish Wednesday, (we have to go to Grove Hill for hearings tomorrow or I could finish it then), and I will start right on the Ferguson case. Unless something unforeseen comes up,I will have no trouble getting it ready by July 13,but if I do need extra time, Judge Lindsey will grant it.

Best regards to you and your family.

Cordially,

s/ Mildred Womble
Mildred Womble

CIRCUIT COURT
FIRST JUDICIAL CIRCUIT OF ALABAMA
CHATOM, ALABAMA

William G. Lindsey, Judge — Mildred N. Womble, Court Reporter

June 25, 1974

Hon. John L. Lawler
Howell, Johnston, Langford & Finkbohner
P. O. Box 1643
Mobile, Alabama 36601

Dear John:

Re: State of Alabama v. Robert I. Ferguson

I have completed the transcript of the Ferguson case, and also the proceedings had on the motion for new trial on May 13, 1974, and will file them with the Circuit Clerk tomorrow morning, June 26, 1974,as the Clerk's office closes at 4:00 p.m. and I didn't get it down there before they closed this afternoon.

I am enclosing my statement for my fee, and thank you so much for getting the money in advance, and for the opportunity to serve you. Any time I can do anything for you up here, just let me know.

60 days 2
June 26, 1974

Cordially yours,
s/ Mildred N. Womble
Mildred N. Womble
Court Reporter,
First Circuit

EXHIBIT "C"

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

ROBERT I. FERGUSON, Appellant,	)	FIRST DIVISION
vs.	)	NO. 508
STATE OF ALABAMA, Appellee	)	

MOTION OF APPELLANT TO BE CONSIDERED AS AN INDIGENT DURING TIME PERIOD OCTOBER 30, 1973, THROUGH JUNE 7,1974

Comes now the Appellant in the above cause, through his attorney, and represents and shows unto this Honorable Court that at the time of his conviction in the above cause on the 30th day of October, 1973, he did not have sufficient funds to employ an attorney to prosecute for him the appeal in the above, nor did he have sufficient funds to pay the $350.00 fee required by the court reporter to transcribe the evidence in the cause on appeal, and Appellant would further show that it was necessary for him to save money from his earnings until he had sufficient money to pay for the transcript and attorney's fees and that Appellant was without counsel on appeal from the date of his conviction until June 7, 1974, at which time he had saved sufficient money to pay for the

cost of the transcript and the fees of his attorney, and Appellant attaches hereto and incorporates herein by reference an affidavit executed by him which sets out the facts and circumstances surrounding the taking of his appeal in the above, and further Appellant incorporates the affidavit filed by his attorney on appeal, John L. Lawler, heretofore filed in this court on the 27th day of February, 1975.

WHEREFORE, the premises considered, Appellant prays that he be considered an indigent during the time period October 30, 1973 through June 7, 1974, and that the order of this Honorable Court heretofore sustaining the State of Alabama's motion to strike the transcript of the evidence for its being tardily filed with the Clerk of the Circuit Court of Washington County, Alabama, be revised and reversed in view of Appellant's indigency during said time period, and Appellant prays for such other, further and different relief as he may be entitled in the premises.

HOWELL, JOHNSTON,LANGFORD,
FINKBOHNER & LAWLER
Attorneys for Appellant

By: John L. Lawyer
John L. Lawyer
Post Office Box 1643
Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 17 day of March, 1975, served a copy of the foregoing motion upon the Honorable William J. Baxley, Attorney General of the State of Alabama, and upon Ms. Sarah M. Greenhaw, Assistant Attorney General of the State of Alabama, by mailing a copy of same by United States mail, properly addressed and First Class postage prepaid.

s/ John L. Lawler
John L. Lawler